IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

...

Criminal Revision No.139 of 2004(O&M)

Decided on : September 27, 2010

Davinder Singh alias Ghulla

... Petitioner

VERSUS

State of Punjab

... Respondent

CORAM : HON'BLE MR.JUSTICE A.N.JINDAL

Present: Mr.Jainainder Saini, Advocate for the petitioner.

Mr.Amit Chaudhary, Assistant Advocate General, Punjab.

A.N.JINDAL, J.-

The Trial Court vide its judgment dated 18.3.2002 convicted Davinder Singh @ Ghulla – accused/petitioner under Section 25 of the Arms Act, 1959 (for brevity `the Act') and sentenced him to undergo rigorous imprisonment for one year and to pay fine of Rs.1000/-. His appeal also could not stand to the scrutiny of the Appellate Court.

The allegations, in nutshell, are that on 28.11.1998, when Head Constable Santokh Singh while on patrol duty was present on the bridge of a canal in the area of village Gaggar Bhana, the accused was seen coming towards the bridge and tried to flee, but on suspicion, he was over-powered by him (HC Santokh Singh). On enquiry, he disclosed his identity . Then, on his search, he was found in possession of a country made pistol and five

live cartridges, which were taken into possession. Rough sketch of the pistol was also drawn and it was sealed in a cloth parcel with the seal bearing impression `SS'. The five cartridges were put in a separate cloth parcel which was also sealed with the same seal. He was arrested accordingly, ruqa was sent to the Police station, upon which the present case was registered. After completion of the requisite formalities, challan against him was presented.

The petitioner denied to the charge framed against him under Section 25 of the Act and opted to contest.

The prosecution in order to prove its case, examined Head Constable Santokh Singh (PW1), who is the Investigating Officer of the case and he proved the entire investigation. LC Paramjit Singh (PW2) is another eye-witness, who has corroborated the version of the Investigating Officer. Constable Kuldip Singh (PW3) tendered into evidence his affidavit Ex.PW3/A. The affidavit of MHC Kulwinder Singh Ex.PY was also tendered.

When examined under Section 313 of the Code of Criminal Procedure, 1973, the accused denied all the incriminating circumstances appearing against him and pleaded his false implication in the case. He also examined one Palwinder Singh (DW1) in defence. The trial ended in his conviction. His appeal also failed.

The prime contention of the counsel for the accused that no independent witness was joined by the police party, does not weigh with the mind of this Court. Although, the case of the prosecution is based upon the testimonies of official witnesses only, but their testimonies cannot be thrown away for their status as such. It is settled law by now that in case

of official witnesses, the court has to take extra caution and care, while appreciating their evidence, so as to rule out any false implication. The witnesses being not inimical to the accused, has no reason to falsely implicate him, therefore, their testimonies being quite consistent to each other, could be placed reliance. It is a matter of common experience that independent witnesses are least interested to support the cause of the State, obviously for multi-fold reasons i.e, they do not want to bother themselves for this thankless job and it also within their knowledge that they would gain nothing, but enmity of the accused.

Absence of independent witness would, however, cast duty on the court to adopt greater care while scrutinising the evidence of police officers. If evidence of police official/s is found acceptable and credible, then it would not be fair to reject the version of the prosecution. Such view was also taken by the Hon'ble Apex Court in case **Tahir vs. State of Delhi**, *1996(3) SCC 338*.

in the instant case also, both Head Constable Santokh Singh (PW1) and LC Paramjit Singh (PW2) are quite consistent as to the time, place and the manner, in which the recovery was effected. Further affidavit of MHC Kulwinder Singh (Ex.PY) mentions that the Investigating Officer had deposited the case property along with requisite documents with him and on 30.12.1998, he had further handed over the parcels to Constable Kuldip Singh (PW3) for deposit in the Forensic Science Laboratory, Chandigarh. This version further finds corroboration from the affidavit of Constable Kuldip Singh (Ex.PW3/A), who has testified of having received the parcels from MHC Kulwinder Singh and its deposit with the Forensic

Science Laboratory, Chandigarh. Ex.PX is the report of the Forensic Science Laboratory. These both witnesses have also testified that as long as the case property remained in their custody, they did not tamper with the same not permitted anybody else to do so. The order (Ex.PX/1) passed by the District Magistrate, Amritsar according sanction for prosecution of the accused has also been proved on the record.

Moreover, it would not be appropriate for this Court to examine the evidence so meticulously at the revisional stage as the interference at the revisional stage could be made very sparingly and in cases where the judgment was palpably wrong, perverse, ignoring the relevant evidence; taking into consideration irrelevant evidence or the court while holding the trial misconducted the proceedings. It has also been observed by the Apex Court in case **Duli Chand vs. Delhi Administration**, *AIR 1975 SC 1960* that the jurisdiction of the High Court in a criminal revision application is severely restricted and it cannot embark upon a re-appreciation of evidence. Similarly, while discussing the scope of revision, the Apex Court in case **State of Kerala vs. Puttumana Nath Jathavedan Namboodiri**, *AIR 1999 SC 981* held as under:-

> "Having examined the impugned judgment of the High Court and bearing in mind the contentions raised by the learned counsel for the parties, we have no hesitation to come to the conclusion that in the case in hand, the High Court has exceeded its revisional jurisdiction. In its revisional jurisdiction, the High Court can call for and examine the record

of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of Supervisory Jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an Appellate Court nor can it be treated even as a second Appellate Jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice."

Similarly, the Apex Court in **Bindeshwari Prasad Singh alias R.P.Singh and others vs. State of Bihar (now Jharkhand) and another**, *2002(4) RCR(Criminal) 61 (SC)* observed that in the absence of any legal infirmity either in the procedure or in the conduct of the trial, there is no justification for the High Court to interfere in exercise of its revisional jurisdiction. Once again, this view was taken in case **State of Maharashtra vs. Sanjay Mangesh Poyarekar**, *2008(4) RCR(Crl.) 555.*

The crux of the discussion is that the re-appreciation of the evidence at revisional stage is not permissible and the power of this Court to interfere at such a stage is very limited. Hence, the finding of guilt recorded by the courts below deserves to be upheld.

The sentence awarded by the courts below also commensurates with the offence committed and, thus, the same also requires no interference.

Petition dismissed.

Copy of the judgment be sent to the Chief Judicial Magistrate, Amritsar for compliance.

September 27, 2010 (A.N.JINDAL)
`gian' JUDGE